

Subject: Revisions to DE Admin. Code 3801 Shellfish Aquaculture.

Date: Tuesday, September 26, 2023 at 2:59:43 PM Eastern Daylight Time

From: an

To: HearingComments, DNREC (MailBox Resources)

Dear Mrs. Newman,

I request that you ask DNREC – Fisheries to reconsider the proposed Shellfish Aquaculture Regulations. Changes to include 2 critical modifications to better align with the original intent of Chapter 178 formerly House Bill 160. These 2 requirements are very costly and I believe scare potential oyster farmers away before they ever get started. Since we were not allowed to grow oysters in the Little Assowaman Bay and clams cannot survive the salinity swings, all of my following comments and request are for the Rehoboth and Indian river bays.

My request:

- Reduce the minimum annual planting requirement from 100,000 to 10,000 per year or **totally eliminate a planting requirement** at all.
- Modify the need for floats based on cage type. Submerged bottom cages are the only type that need addition marking.

The Center for the Inland Bays is a private non-profit organization whose mission is - *To protect, preserve and restore Delaware's Inland Bays, the water that flows into them, and the watershed around them.* Our inland bays are in poor health due to excess nutrients. These excess nutrients cause high growth rates of algae. The algae block the sun light and kills the sub-aqueous grasses. At night the algae decays, falls to the bottom and causes hypoxic (low oxygen) zones. Clams and Oysters (bivalves) remove the algae from the waters and are critical to the health of the bays. Historical and current efforts are:

- How do we get more oysters into these waterways?

Aquaculture still is the best way to increase the bivalve removal of these excess nutrients.

Sussex Conservation District whose Mission Statement is - *To serve Sussex County by providing technical guidance and financial assistance* has recently started a pilot program to help cost sharing of equipment. Another group that knows we need **more farmers** of any size to help this nutrient removal process.

In March of 2013 the Center for the Inland Bays released the Tiger Report. This report proposed regulatory changes that will:
help increase industry expansion and contribute to environmental benefits in the Inland Bays. The primary industry in Sussex County is Tourism. Water quality is a very important part of this industry. It would also be great to have local raised oysters for the

restaurant industry.

HB- 160 Legislation Synopsis – 8/2013

AN ACT TO AMEND TITLE 3 AND TITLE 7 OF THE DELAWARE CODE RELATING TO AQUACULTURE.

WHEREAS, Delaware is the only East Coast state that does not have a shellfish aquaculture industry; and

WHEREAS, Delaware's Inland Bays (Rehoboth, Indian River, Little Assawoman, and Delaware's portion of Big Assawoman Bay) have been shown to be suitable for the growth and survival of commercial shellfish species such as oysters and hard clams; and

WHEREAS, Delaware's Inland Bays are **water quality impaired and would benefit from the filtering capability of additional bivalve shellfish**; and

WHEREAS, there are **potential** economic benefits from the **fostering** of a **new industry** in eastern Sussex County that is compatible with pre-existing recreational uses; and

WHEREAS, the Center for the Inland Bays in conjunction with the Department of Natural Resources and Environmental Control, the Delaware Department of Agriculture, the University of Delaware Sea Grant Marine Advisory Service, the Sussex County Economic Development Office, and with the participation of recreational and commercial fishing interests have met extensively and publicly to develop the scientific and educational and policy- related information to support the establishment and **nurturing** of a shellfish aquaculture industry in the Inland Bays;

When we were in the public hearing part of the process – there were concerns like the following list.

1. Do not want to see or hear farmer from my house
2. Do not want these farms to prevent my normal navigation / utilization of these waterways.
3. Do not want to run into the farming equipment while operating my boat.
4. There was also fear that home owners would lease the property in front of their houses to prevent using these areas for farms.
5. There were also concerns that non-profit organizations would lease property and not farm them.

DNREC did a fabulous job of addressing these concerns as part of the site selection process and we do not need the additional planting or white float requirements for non-submerged gear.

My perspective on the public comment concerns above are below:

1. Lease areas are extremely remote and are outside of the normal view of expensive property owners.
2. Lease areas are extremely shallow parts of the bay that are rarely used by power boats without running aground on sandbars. 20' navigation channels were created for Kayakers that we rarely see paddle past our farms. They are a long way away from launching points. I have never seen the channels use for recreational use.
3. We are required to have 6" corner poles that are 5 feet above the surface of the water at mean high water. Affix an orange reflective diamond placard, measuring a minimum of 12 inches by 12 inches to each corner pole with at least 24 inches of additional white or orange reflective material above the water line, a portion of which must be visible from all directions. Each lease is ~ 200' * 200' and these warning corner markers are visible from very far away preventing accidental interaction with aquaculture gear.
4. Lease areas are extremely remote and are outside of the normal view of expensive property owners. No such leases have been requested / awarded.
5. We have strong support from environmental groups and the public to use these acres for farming and nutrient removal. No such leases have been requested / awarded.

1) Oyster Planting Requirements

Oysters harvest cycle is between 6 months to 2 years, some oysters just grow faster than others. Only 50% of the first year's planting is harvested when it is time to plant again. During the growth time of the year, oyster cages should be culled to separate the fast growers from the slow growers. During the summer months the farmer must process every bag on their farm once a month. The seed that we plant is smaller than a kernel of pop corn and market size 3". This requires lots of poles, lines, anchors and cages above the original planting point. Current perception with the active farmers is that 100,000 oysters planting requires \$30,000 to \$50,000 of equipment. As the number of cages on your farm increases the amount of labor increases. Creating another barrier to entry. If the planting requirement were 10,000 that is \$3,000 to \$5,000 in gear plus boats, trailers, corner markers and other gear. This is still a very large commitment for a recent graduate or part time farmer and will clearly prevent some folks from entering this industry.

I request reduction or elimination of the minimum annual planting requirement from 100,000 to at least 10,000 per year or **totally eliminate a planting requirement** and allow the farm sizes to grow organically. We just need more farmers.

8 active acres * 100,000 = 800,000 Oysters. This requirement is a huge barrier to entry.

298 active acres * 10,000 = 2,980,000 oysters. Lower planting per acres can still get us to a New Aquaculture industry if we get more farmers started.

2) Eliminate “Marking Floats” requirement on Long-Line Gear and Floating gear

I request that no floats be required on Australian longline systems. These systems hang growing cages or bags to a cable that is suspended on poles ~ 6 feet apart that are well above high tide level and very visible. I have heard that these poles could be submerged in an extreme weather event. The 6” corner markers still warn of navigational hazards. I have been on my acre in extreme conditions and never saw my poles go under. If the water ever got this high the islands and grass areas adjacent to the farms would be submerged and boaters should not be out there, designing for these conditions is cost prohibitive.

I request that no floats be required on floating cages, as these cages come with black floating containers installed from the factory or farmer. Having to add white supplemental floats to these cages provides additional expenses (cost of float and labor to handle). The additional 3” white float does not make the cage easier to see.

Ten years after the inception of the legislation changes, we are struggling to get farmers and oysters into the waterways. We need DNREC to modify their approach to meet the Legislation request below:

- by fostering of a **new industry** in eastern Sussex County
- scientific and educational and policy- related information to support the establishment and nurturing of a shellfish aquaculture industry in the Inland Bays

We need DNREC to lower the cost of entry into Aquaculture in the Delaware inland bays.

.

Mark Casey

President of Delaware Cultured Seafood